IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5049 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CLOTH TRADERS - Petitioner(s)
Versus
COMMISSIONER OF INCOME TAX & 3 - Respondent(s)

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Appearance :
MR BD KARIA for MR RK PATEL for Petitioner(s) : 1,
MR MANISH R BHATT for the Respondent(s)

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 24/03/2006

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE K.A.PUJ)

Leave to amend this petition as per the draft amendment.

2. **RULE**. Mr. M.R. Bhatt, learned Sr. Standing Counsel, waives service of rule for the respondents.

3. The petitioner has filed this petition under Art. 226 of the Constitution of India praying for a direction to the respondent no. 1 to pass an order on application under sec. 22(5B) of the Gift-tax Act, 1958 (hereinafter referred to as '**the Act**') at the earliest in accordance with law.

4. This court had issued the notice on 21.3.2006. Before the notice was served on the respondents, the respondent No. 1 has passed an order on 21.3.2006 on the application moved by the petitioner under sec. 22(5B) of the Act. In the said order it has been observed that 'since the issue has already been concluded by the CIT (Appeals) after considering various facts before him, no supplemental order is

necessary in this case.' He has further observed that 'section 22(5B) of the Gift Tax Act does not empower the CIT(A) to pass any supplemental order. The petitioner has also accepted the said order of CIT(A) as neither it has filed any appeal against the said order before ITAT, nor any rectification was filed within the prescribed time u/s 34 of the Gift Tax Act.'

5. On service of the notice, an affidavit-in-reply was filed by the respondent no. 1.

6. Heard learned advocate Mr. Karia appearing for the petitioner and learned Sr. Standing Counsel Mr. M.R. Bhatt appearing for the respondents.

7. It is the case of the petitioner that the Gift-tax Officer issued notice under sec. 16 of the Act under the belief that the petitioner has made taxable gift in the year ending on 30.6.1983, relevant to AY 1984-85, after termination of Income-tax proceedings under sec. 55(1) of the Income-tax Act, 1961 by the rejection of Revenue's Reference Application under

sec. 256(1) of the Income-tax Act. The Gift-tax Officer, after rejecting the objections of the petitioner raised, passed an order under sec. 15(3) of the Act on 29.3.1993 holding that the petitioner had made taxable gift of Rs. 1,07,53,776/- and has arrived at a taxable gift of Rs. 1,07,48,776/- after granting basic exemption of Rs. 5,000/-. Being aggrieved by the said order, an appeal was preferred before the CGT (Appeals). The CGT (Appeals) dismissed the said appeal of the petitioner on 10.2.1994. The Income-tax Appellate Tribunal, by its order dated 19.12.1996, set aside the order passed by the CGT(Appeals) by remanding the matter back to the CGT (Appeals) with a direction to consider the entire mater de novo including the aspect of the year of taxability after granting an opportunity of hearing to both the sides in GTA No. 7/AHD/94. The CGT (Appeals), after giving opportunity to both the sides passed an order on 22.4.1999 partly allowing the appeal of the petitioner on the point of applicability of sec. 45(c) of the Act and did not decide the aspect of year of taxability. The Department (Revenue) filed gift tax appeal being Gift

Tax Appeal No. 3/AHD/1999 before the Tribunal in 1999. On service of the appeal memo and at the time of hearing of the appeal, the petitioner found that all the issues raised have not been decided by the CGT (Appeals). Cross-Objection was, therefore, filed before the Tribunal along with delay condonation application. The petitioner has also moved an application on 8.4.2005 before the CGT (Appeals) to pass supplemental order deciding the aspect of year of taxability as directed by the Tribunal in the order dated 19.12.1996. The petitioner has also requested CGT (Appeals) to decide its application under sec. 22(5B) of the Act on 1.10.2005 and pursuant thereto, the application was heard on 25.10.2005. Further order was not passed in the matter and hence the petitioner has approached this court for appropriate direction.

8. Learned advocate Mr. Karia has submitted that since other issues were not decided by the CGT (appeals) as directed by the Tribunal, the CGT (Appeals) should be directed to decide those issues. Since the CGT (Appeals) has already passed an order

under sec. 22(5B) of the Act, an amendment was moved seeking direction to the CGT (Appeals) to decide the other issues by passing a supplemental order.

9. Mr. Bhatt, the learned counsel appearing for the revenue has objected to any direction being issued on the ground that the petitioner filed its cross-objection before the Tribunal very late. Moreover, the Department's appeal and the cross-objections are still pending before the Tribunal for appropriate decision and hence no directions are required to be issued in its favour.

10. After hearing Mr Karia, the learned advocate appearing for the petitioner and Mr. Bhatt, learned St. Standing Counsel appearing for the respondents, we are of the view that since the Revenue's appeal is still pending before the Tribunal and cross-objections, though belatedly filed by the petitioner before the Tribunal are still pending, the Tribunal will mould its relief appropriately and decide the said appeal as well as the cross-objections. We, therefore, do not find any justification to issue any

direction at present to the CGT (Appeals) to decide the other issues. There is no dispute about the fact that the petitioner succeeded in its appeal before the CGT (Appeals), against which the Revenue has filed second appeal before the Tribunal. In case the appeal filed by the revenue before the Tribunal is allowed, in that case, other issues, which have been raised by the petitioner before the CGT (Appeals) and which have not been decided are not required to be looked into. It is open for the petitioner to take all these grounds before the Tribunal where the appeal and the cross-objections are pending. In the above view of the matter, we dispose of this petition since the appeal as well cross-objections are pending before the Tribunal.

The petition is disposed of as rejected with no order as to costs. Rule is discharged.

(Anil R. Dave, J.)

(K.A. Puj, J.)

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